

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE MARCH 30, 2004

SENATE BILL

No. 1608

**Introduced by Senator Karnette
(Coauthors: Senators Romero and Vasconcellos)**

February 20, 2004

An act to amend Sections 2912 and 5028 of the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, as amended, Karnette. Corrections: prisoners: foreign nationals.

Existing law requires that upon entry of any person who is an undocumented alien subject to deportation into a facility operated by the Department of Corrections, and at least every year thereafter, the Director of Corrections inform the person of his or her right to be transferred to his or her country of origin to serve the remainder of his or her prison term.

This bill would delete the annual notification requirement, would expand these provisions to include all foreign nationals, and would provide the person the option to serve the remainder of his or her term in his or her nation of citizenship. The bill would also impose additional notification requirements upon the director, including notifying consulates or embassies and compliance with the 1963 Vienna Convention on Consular Relations Treaty. ~~The bill would require the director to implement procedures to determine the citizenship of committed felons, and would require the department to provide specified information regarding these persons to the Governor for~~

~~screening purposes related to potential transfers of these persons, as specified.~~

This bill would make other technical conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2912 of the Penal Code is amended to
2 read:

3 2912. (a) Under its Foreign Prisoner Transfer Program, the
4 Board of Prison Terms shall devise a method of notifying each
5 undocumented felon in a prison or reception center operated by the
6 Department of Corrections that he or she may be eligible to serve
7 his or her term of imprisonment in his or her nation of citizenship
8 as provided in federal treaties.

9 (b) (1) The Board of Prison Terms shall actively encourage
10 each eligible undocumented felon to apply for return to his or her
11 nation of citizenship as provided in federal treaties and shall
12 provide quarterly reports outlining its efforts under this section to
13 the Chairperson of the Joint Legislative Budget Committee and the
14 chairperson of each fiscal committee of the Legislature.

15 (2) The Board of Prison Terms shall adopt the model program
16 developed by the State of Texas for encouraging participation in
17 the federal repatriation program where appropriate.

18 SEC. 2. Section 5028 of the Penal Code is amended to read:

19 5028. (a) Upon the entry of any person who is a foreign
20 national into a facility operated by the Department of Corrections,
21 the Director of Corrections shall inform the person that he or she
22 may apply to be transferred to serve the remainder of his or her
23 prison term in his or her nation of citizenship. The director shall
24 inform the person that he or she may contact his or her consulate
25 and shall ensure that if notification is requested, that the person's
26 nearest consulate or embassy is notified without delay of his or her
27 incarceration. If a foreign national with citizenship in a nation that
28 requires mandatory notification according to the 1963 Vienna
29 Convention on Consular Relations Treaty is received as a
30 committed felon by the department, the director shall inform the
31 consulate or that nation of the committed felon's incarceration
32 without delay. The director shall inform the foreign national that



1 the consulate has been notified. The director shall keep written
2 records sufficient to show compliance with notification
3 requirements. Semi-annually, the director shall provide to the
4 appropriate foreign consulate a list of that nation's citizens who are
5 incarcerated in department institutions.

6 ~~(b) The director shall implement procedures to determine the~~
7 ~~citizenship of committed felons who are subject to subdivision (a).~~
8 ~~Documents that may be used in determining citizenship include,~~
9 ~~but are not limited to, the following:~~

- 10 ~~(1) Citizenship documents.~~
- 11 ~~(2) Court documents.~~
- 12 ~~(3) Written statements from foreign consulates.~~
- 13 ~~(4) Information from the Department of Justice's Criminal~~
14 ~~Identification and Information Unit.~~
- 15 ~~(5) Birth certificate.~~
- 16 ~~(6) Prior parole records.~~
- 17 ~~(7) Prior arrest records.~~
- 18 ~~(8) Probation officer's report.~~
- 19 ~~(9) Inmate's signed statements.~~

20 ~~(c) The Department of Corrections shall implement and~~
21 ~~maintain procedures to process applications for the transfer of~~
22 ~~prisoners to their nations of citizenship under subdivision (a), and~~
23 ~~shall forward all applications to the Governor or his or her~~
24 ~~designee for appropriate action. The department shall provide the~~
25 ~~following information to the Governor or his or her designee for~~
26 ~~screening transfer applications:~~

- 27 ~~(1) Board of Prison Terms Foreign Prisoner Transfer~~
28 ~~Application.~~
- 29 ~~(2) Name.~~
- 30 ~~(3) Department of Corrections number.~~
- 31 ~~(4) Date of birth.~~
- 32 ~~(5) Place of birth.~~
- 33 ~~(6) Nation of citizenship.~~

34 ~~(d) The department shall provide the following information to~~
35 ~~the Governor or his or her designee when requested for those~~
36 ~~applications that pass screening criteria and are to be considered~~
37 ~~for approval:~~

- 38 ~~(1) Cumulative case summary.~~
- 39 ~~(2) Abstract of Judgment.~~
- 40 ~~(3) Calculation of credit earned.~~

1 ~~(4) Tuberculosis documentation.~~

2 ~~(5) Most recent classification committee action.~~

3 ~~(6) Restitution balance.~~

4 ~~(7) Medical and psychological records.~~

5 ~~(8) Disciplinary record.~~

6 ~~(9) Pending court actions.~~

7 ~~(10) Detainers.~~

8 ~~(e) The department shall provide quarterly to the Governor or~~
9 ~~his or her designee, for the management of the Foreign Prisoner~~
10 ~~Transfer program, a list of foreign nationals with new prison~~
11 ~~commitments who are not on parole, including the following:~~

12 ~~(1) Name.~~

13 ~~(2) Date of birth.~~

14 ~~(3) Nation of birth.~~

15 ~~(4) Nation of citizenship.~~

16 ~~(5) Department of Corrections number.~~

17 ~~(6) Department of Corrections facility or location where the~~
18 ~~foreign national is located.~~

19 ~~(7) Commitment offense.~~

20 ~~(8) Sentence.~~

21 ~~(9) Whether or not the foreign national is subject to a United~~
22 ~~States Bureau of Immigration and Customs Enforcement hold.~~

23 ~~(f) The department shall provide facilities for the consent~~
24 ~~verification hearing for foreign nationals approved for transfer to~~
25 ~~their nation of citizenship and shall transport the inmate to the~~
26 ~~consent verification hearing to be taken into federal custody.~~

27 ~~(g)~~

28 ~~(b) The Department of Corrections may pay any foreign nation~~
29 ~~to which an inmate is transferred under subdivision (a) no more~~
30 ~~than two thousand dollars (\$2,000) from moneys appropriated by~~
31 ~~the Legislature for that purpose for every year that the inmate is~~
32 ~~imprisoned until he or she has completed the prison term which he~~
33 ~~or she began serving in this state.~~